

**FINANCIAL SERVICES COMPENSATION SCHEME (FINANCIAL SERVICES
ACT 2010) INSTRUMENT (NO 2) 2010**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the powers and related provisions in the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance); and
 - (d) section 224F (Rules about relevant schemes); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force when section 224F of the Act comes into force.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Financial Services Compensation Scheme (Financial Services Act 2010) Instrument (No 2) 2010.

By order of the Board
23 September 2010

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>MERS levy</i>	a levy (management expenses in respect of relevant schemes levy) imposed by the <i>FSCS</i> on <i>participant firms</i> to meet the management expenses incurred by the <i>FSCS</i> in connection with acting on behalf of the <i>manager of the relevant scheme</i> in accordance with Part 15A of the <i>Act</i> .
<i>manager of the relevant scheme</i>	the <i>person</i> (including a <i>person</i> outside the <i>United Kingdom</i>) who administers the <i>relevant scheme</i> or (if there is no such <i>person</i>) the <i>person</i> responsible for making payments under it.

Amend the following as shown.

<i>management expenses</i>	(1) (except in <i>INSPRU</i>) (in accordance with section 223 of the <i>Act</i> (Management expenses)) expenses incurred or expected to be incurred by the <i>FSCS</i> in connection with its function under <i>COMP</i> <u>the <i>Act</i></u> , other than <i>compensation costs</i> and <u>costs incurred under Part 15A of the <i>Act</i></u> ; for the purposes of <i>COMP FEES 6</i> these are subdivided into <i>base costs</i> , <i>specific costs</i> and <i>establishment costs</i> .
	(2) ...
<i>relevant scheme</i>	(1) <u>(except in <i>FEES 6</i>) a collective investment scheme</u> managed by an <i>EEA UCITS management company</i> .
	(2) <u>(in <i>FEES 6</i>) a scheme or arrangement (other than the <i>compensation scheme</i>) for the payment of compensation (in certain cases) to customers (including customers outside the <i>United Kingdom</i>) of persons (including persons outside the <i>United Kingdom</i>) who provide financial services (including financial services provided outside the <i>United Kingdom</i>) or carry on a business connected with the provision of such services.</u>

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

6.1.4A G Section 224F of the Act enables the FSA to make rules to enable the FSCS to impose levies on authorised persons (or any class of authorised persons) in order to meet its management expenses incurred if, under Part 15A of the Act, it is required by HM Treasury to act in relation to relevant schemes. But those rules must provide that the FSCS can impose a levy only if the FSCS has tried its best to obtain reimbursement of those expenses from the manager of the relevant scheme.

6.1.5 G The FSCS may impose ~~two~~ three types of levy: a *management expenses levy*, ~~and~~ a *compensation costs levy* and a *MERS levy*. The FSCS has discretion as to the timing of the levies imposed.

...

6.1.9 G Section 223 of the Act (Management expenses) prevents the FSCS from recovering, through a levy, any *management expenses* attributable to a particular period in excess of the limit set in COMP as applicable to that period. 'Management expenses' are defined in section 223(3) to mean expenses incurred or expected to be incurred by the FSCS in connection with its functions under the Act, except:

- (1) ...
- (2) expenses incurred as a result of the FSCS making the arrangements to secure continuity of insurance set out in COMP 3.3.1R and COMP 3.3.2R or taking the measures set out in COMP 3.3.3R and COMP 3.3.4R when a *relevant person* is an *insurer* in financial difficulties; ~~and~~
- (3) expenses incurred under section 214B or section 214D of the Act as a result of the FSCS being required by HM Treasury to make payments in connection with the exercise of the stabilisation power under Part 1 of the Banking Act 2009; and
- (4) expenses incurred under Part XVA of the Act as a result of the FSCS being required by HM Treasury to act in relation to a relevant scheme.

...

6.3.1 R The FSCS may at any time impose a *management expenses levy*, ~~or~~ a *compensation costs levy* or a *MERS levy*, provided that the FSCS has reasonable grounds for believing that the funds available to it to meet

relevant expenses are, or will be, insufficient, taking into account:

...

...

- 6.3.3 G The *FSCS* may impose one or more levies in a financial year to meet ~~either~~ its *management expenses*, ~~or~~ its *compensation costs* or its management expenses in respect of *relevant schemes*. ...

...

After FEES 6.4 insert the following new section. The new text is not underlined.

6.4A Management expenses in respect of relevant schemes

Obligation on participant firm to pay

- 6.4A.1 R A *participant firm* must pay to the *FSCS* a share of each *MERS levy*.

Restriction on management expenses in respect of relevant schemes

- 6.4A.2 R The *FSCS* can impose a *MERS levy* only if the *FSCS* has tried its best and has failed to obtain reimbursement of those expenses from the manager of the relevant compensation scheme.

Management expenses in respect of relevant schemes levy

- 6.4A.3 R The *FSCS* must calculate a *participant firm*'s share of a *MERS levy* on a reasonable basis.

Amend the following as shown.

Sch 4 Powers exercised

- G The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *FEES*:

	...
	Section 223C (Payments in error)
	<u>Section 224F (Rules about relevant schemes)</u>
	...